



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1286 of 2019

S.Kaliamoorthy

... Petitioner/Father of
the detenu

-vs-

1.State of Tamil Nadu, rep. by

The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
O/o The District Collector and District Magistrate,
Perambalur District,
Perambalur.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records in detention order passed in Cr.M.P.No.28/2019 dated 12.10.2019 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son, namely, Senkottuvel, S/o Kaliamoorthy, male, aged 27 years, who is detained in Central Prison, Tiruchirappalli before this Court.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.R.Anandharaj
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

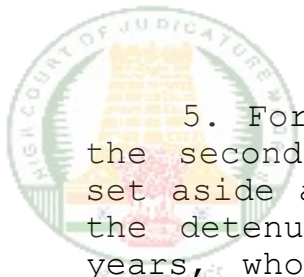
Challenging the detention order of the second respondent dated 12.10.2019 passed in Cr.M.P.No.28/2019 branding the detenu, namely, Senkottuvel, S/o Kaliamoorthy, aged 27 years, as 'Drug Offender' as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982, his father has filed the Habeas Corpus Petition.



2.Mr.K.A.S.Prabhu, learned counsel for the petitioner would urge that the impugned order of the second respondent is liable to be set aside for the reason that there was no proper intimation of arrest of the detenu in the ground case. It is the submission of the learned counsel for the petitioner that no details have been furnished particularly the cell number mentioned at page No.60, whether it belongs to the family members of the detenu or his relatives. It is also stated that the text of the SMS also not found in the booklet. He would add that the detenu was granted bail in the adverse case and the bail application filed in the ground case was pending in Cr.M.P.No.326 of 2019 on the file of the Additional District and Special Court, Pudukkottai. The detaining authority has also referred the bail order granted in a similar case in Cr.M.P.No.122 of 2019 dated 04.04.2019. It is the submission of the learned counsel for the petitioner that when the bail petition was pending before the Additional District and Special Judge, Pudukkottai in Cr.M.P.No.326 of 2019, the detaining authority, in paragraph 5 of the detention order, has stated that there is a real possibility of the detenu coming out on bail by filing another bail petition in the appropriate Court. According to the learned counsel, this is totally non-application of mind and on this ground, the detention order is liable to be quashed.

3.Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, would argue that the detention order has been passed after scrutinizing the entire materials produced by the sponsoring authority and there is no illegality or infirmity in the detention order warranting interference of this Court.

4.In the matter on hand, even according to the sponsoring authority, the arrest of the detenu in the ground case was intimated to the cell No.7708859944 through SMS, however, there is no record to show whether the cell number belongs to the family members of the detenu or his relatives. It is also from the records that the text of the SMS has not been stated in the booklet. This Court consistently held that failure to intimate the arrest of the detenu to his family members would deprive his valuable rights to make effective representation to the concerned authority for revocation of the order of detention and non-mentioning of the text intimation in the booklet would also vitiate the order of detention. Further, as rightly contended by the learned counsel for the petitioner that when the bail petition in respect of the ground case was pending consideration before the concerned Court, the sponsoring authority has stated that there is a real possibility of detenu coming out on bail by filing another bail petition in the appropriate Court. This averment, in our considered opinion, shows totally non-application of mind on the part of the detaining authority.



5. For the foregoing reasons, the order of detention passed by the second respondent, in Cr.M.P.No.28/2019, dated 12.10.2019, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Senkottuvel, S/o Kaliamoorthy, male, aged 27 years, who is detained in Central Prison, Tiruchirappalli before this Court, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

skn / krk

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
O/o The District Collector and District Magistrate,
Perambalur District, Perambalur.
- 3.The Superintendent,
Central Prison, Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law & Order), Fort St. George, Chennai-09
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1286 of 2019

15.07.2020

AP (28.07.2020) 3P-6C

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